IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.97 OF 2006

IN

SUMMARY SUIT NO.118 OF 2006

Jiten Arjun Chabaria ...Plaintiff.

vs.

1. M/s.Pashak Poly Products Pvt. Ltd. & another. ...Defendants.

Ms.Nita Solanki i/b. Mr.Kiran Jain & Co., for Plaintiff.

Mr.Jaideep Mitra i/b. Kaushik Kothari, for Defendant no.1.

None for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June, 2006.

P.C.:-

1. By consent of plaintiff and defendant no.1, the summons for judgment is disposed of in the following terms:

(i) In case the defendant no.1, within a period of Four weeks from today, with due notice to the plaintiff, deposits amount of Rs.70,000/- (Rupees Seventy Thousand only) in this Court, this

summons for judgment as against defendant no.1 shall stand disposed of with leave to defend the suit being granted to the defendant no.1. In that event, the defendant no.1 to file written statement within a period of eight weeks from the date of deposit.

(ii) On the amount being deposited, the Prothonotary and Senior Master of this Court shall permit the plaintiff to withdraw the amount on furnishing bank guarantee of a nationalised bank and on furnishing an undertaking to the Court to re-deposit the amount if so directed by this Court on such terms and conditions as may be directed by this court. The withdrawal is permitted within a period of Six weeks from the date of deposit.

(iii) If the amount is not withdrawn, the Prothonotary and Senior Master of this Court shall invest the amount in fixed deposit in a nationalised bank during the pendency of the suit.

(iv) In case the amount is not so deposited, the summons for judgment shall stand granted and the suit shall stand decreed against the defendant no.1 in terms of prayer clause of the suit. In that event, refund of Court fees as per rules.

2. So far as the summons for judgment against defendant no.2 is concerned, the plaintiff has filed affidavit of service showing that the defendant no.2 has been served. The defendant no.2 is not appearing. No application for leave to defend the suit has been filed by

defendant no.2. In terms of Order XXXVII of C.P.C. failure of a defendant to apply to leave to defend the suit within a time fixed by Order XXXVII of C.P.C. entitles the plaintiff to a judgment. The defendant no.2 is the acceptor of bill of exchange on which the suit is based. I have perused the record. Heard the learned Counsel appearing for plaintiff. In the absence of any application for leave to defend the suit filed by defendant no.2, the defendant no.2 is not entitled to leave to defend the suit. On the contrary, the plaintiff is entitled to a judgment. The suit is therefore, decreed as against defendant no.2 in terms of prayer clause of the suit.

Refund of Court fees as per rules.